A REPORT ON COLLECTIVE BARGAINING IN THE PRINCE EDWARD ISLAND CIVIL SERVICE

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Introduction

In November, 1983, I was engaged by the Province of Prince Edward Island to provide an assessment of the Province's collective bargaining framework for the Civil Service, outlining the problems, if any, with the present framework and recommending ways and means to improve that framework.

I conducted a number of interviews on the Island between November 17th and 21st with people[1] who are involved with collective bargaining in the civil service or who have an expressed interest in collective bargaining in the civil service. The following is my report.

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[1]The list of persons interviewed appears in Schedule A.

Background

In 1971, the Province decided to provide a system of collective bargaining for its public service. In order to accomplish this, the Civil Service Act was amended in 1972[2] whereby regulations were to be promulgated, setting out the framework by which a method of "consultation and negotiation" would be possible.

By establishing the framework of consultation and negotiation in the regulations, there was no need to make extensive amendments to the Civil Service Act that had been enacted in 1963.[3]

In 1976, I conducted a study into the experience of collective bargaining up to that time. On this occasion the study included the entire public service and not only the civil service. That study was presented to the P.E.I. Government in late January, 1977, which contained a number of recommendations. When the government of the day in 1977 was defeated at the election polls in 1979, only a few of the recommendations had been implemented. No further changes occurred until 1982.

The Civil Service Act had received only minor amendments since 1963 and in the early eighties it was

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[2]21 Eliz II, 1972, Ch. 7, & 9.

[3]11 Eliz II, Ch. 4.

decided by the Civil Service Commission and its senior staff that a number of amendments were urgently required.

Consequently, in March, 1982, the Civil Service Commission staff presented a revised Civil Service Act to the Executive Council (cabinet) with a recommendation that it be forwarded to the Legislative Assembly for enactment. However, the Executive Council rejected the recommendation because of time constraints already facing the Legislative Assembly in dispensing with the business that was then before it. However, the Executive Council indicated that the proposed revisions would go forward in 1983.

It should be emphasized that the proposed draft did not include changes to the consultation and negotiation framework. It had been decided by the Commission and its staff that a number of the administrative provisions in the Act required immediate amendments but that the consultation and negotiation provisions could await later attention.

Whether or not the Prince Edward Island Public Service Association, Inc. (hereinafter referred to as the Association, the authorized representative of civil servants) had been made aware that a revised draft was to be presented to the Executive Council is unclear. However, the Association's reaction was to present a brief several months

later[4] to the premier, the Honourable James Lee, and to the minister responsible for the Civil Service Act, the Honourable George R. McMahon, wherein the draft legislation was denounced with demands that it be rejected. The brief reads in part, as follows:

> 1. That you abandon the currently submitted draft act.
>
> 2. That you substitute this for either an Act split into two parts, one dealing with the administrative side of the public service commission, and the other dealing with labour relations functions. Or, alternatively and preferably, you could consider repealing the current Civil Service Act and therefore substitute it with two pieces of legislation--the "Public Service Act," dealing solely with the administrative functions and the "Public Service Labour Relations Act," dealing with the labour relations aspect, including all labour relations functions from certification to dispute settlement mechanisms.
>
> 3. We would, as well, be open to discussing the concept that all workers in Prince Edward Island be placed under one Trade Union Act. However, we well recognize the uniqueness of the public service and have reservations as to whether this is the best alternative.

Premier Lee responded to the brief several days later by giving an undertaking to the Association that a review of the consultation and negotiation framework would be commissioned before any revisions to that framework occurred.

Notwithstanding the foregoing, the Legislative Assembly enacted a new Civil Service Act approximately one year

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[4]The brief is dated September, 1982.

later[5] and at the same time repealed the old Civil Service Act. Similarly, the old Civil Service Regulations (EC 1017/74) were revoked and new Regulations came into force on the day the Act was proclaimed. While the new Regulations retained the previous provisions virtually intact, there were certain changes made, some of which will be alluded to later in this report.

In any event, subsequent to the aforementioned changes, I was requested to conduct this review and carry out the commitment that Premier Lee had given to the Association.

The 1976 Study

I have already stated that a study on collective bargaining in the public service was conducted in 1976. Several recommendations in that study were implemented while a number of them were not. Six years had passed since that study was conducted and a new government was in power when demands were again being made for change.

It is perfectly understandable that in such circumstances the present government would prefer to have a review undertaken before proceeding to make further changes. I fully realize that human relations in an employment setting never remain static. It is a continually evolving

[5]Proclaimed into force on September 24, 1983.

process. Changes in attitudes occur, although imperceptibly at times, and participants in the process must be malleable to necessary changes if they are to be successful over the long term. I also recognize that while many changes occur there remain certain basics that endure for lengthy periods of time.

With these considerations in mind, I will be referring to the 1976 study from time to time. I will devote particular attention to topics which require new or alternative courses of action that, in my opinion, are more appropriate in present day circumstances than was the case in 1976. However, the 1976 study continues to be relevant in many respects and should be reread in conjunction with this report.

The Framework

It might be convenient at this point to reproduce what was asked of me by the Province. My undertaking reads, in part, as follows:

> 1. That Simmons review the present legislative framework covering collective bargaining in the civil service of Prince Edward Island.
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> 2. That Simmons obtain the views of all parties concerned as to:
>
> (a) the desirability of the present framework;
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> (b) identification of problem areas, if any, in the present framework;

(c) recommendations for changes or improvements to the present framework.

3. That Simmons examine and consider the legislative framework of other jurisdictions in Canada;

4. That, based on the findings derived from his efforts in relation to the matters above-described herein together with his assessment of the need for change, Simmons prepare and deliver a written report to the Province containing:

(a) an outline of the problems, if any, with the present collective bargaining framework;

(b) recommendations on ways and means to improve the framework;

5. That Simmons shall complete all services to the Province pursuant to this agreement including submission of the above-described report by January 1, 1984, or in any event not later than January 31, 1984.

The word, framework, is defined in Webster's Third New International Unabridged Dictionary to mean "a skeletal or structural frame...a conceptual scheme, structure, or system..." It is my understanding that I am to report on the structure or system of collective bargaining that presently exists in the Civil Service of Prince Edward Island.

A Statute Versus a Regulation

It will be remembered that the enabling provisions for consultation and negotiation were placed in a regulation following the amendment to the Civil Service Act in 1972. This issue was addressed in the 1976 study where it was stated on page 59:

SECTION 7

A REQUIREMENT FOR

(i) New Legislation

As stated earlier, when the Government decided to embark on a consultation and negotiation process it did so in large measure by Regulation. Whatever the merits may have been for proceeding in such a manner, I believe that the time has arrived when the process should now be included in a statute or statutes. A number of individuals expressed concern that the regulations can be changed quickly and quietly and therefore conclude that the present system is not based on a very firm foundation. If, on the other hand, the process was embodied in a statute or statutes it would not be possible to make rapid changes, at least not without publicity. Almost without exception, however, it was admitted that it would be foolhardy for the Lieutenant-Governor-in-Council to make changes in the regulations that would jeopardize the system and no one really believed that the Lieutenant-Governor-in-Council would make such a change. Nevertheless, it is my impression that an underlying fear exists in the minds of many that they could suddenly be faced with an entirely different system and this uncertainty is not healthy.

8. I THEREFORE RECOMMEND THAT THE CONSULTATION AND NEGOTIATION PROCESS BE EMBODIED IN STATUTE FORM RATHER THAN IN REGULATIONS.

My views have not changed since 1976. Indeed, I submit that additional reasons exist why the consultation and negotiation process ought to be embodied in a statute rather than in regulations.

One reason for the need to change is the distinct possibility of an upsurge in militancy among Association members in the near future if the present situation is

allowed to continue. The rationale for this statement is as follows: Prince Edward Island is the only jurisdiction in Canada which places the operational provisions of collective bargaining in a regulation rather than in a statute. If this could be viewed in isolation of external factors, there would be no cause for concern. But the Association no longer operates in isolation. It became affiliated with other organizations, such as the National Union of Provincial Government Employees, in 1979. Reciprocal information and association with other provincial organizations resulted. It is no secret that the general trade union movement views with disdain the structuring of labour relations in regulations. They claim that it must be firmly based in statute to be acceptable. When these views are expressed at national conventions it is understandable if Association officials and other members question whether or not they are really full fledged members in the national organization. This situation predictably fosters a feeling of insecurity and inferiority, to be followed by frustration and resentment, which is eventually transformed into militancy. Once ignited, militancy is sometimes difficult to curtail or subdue.

It is clear that I advocate the placing of the operational provisions in a statute. A logical question that one might ask is what would be the disadvantages in

doing so. One disadvantage that is most frequently cited is the inflexibility to change that would be created. It is true that changes to a statute require action by the Legislative Assembly. It is also true that once a Legislative Assembly has enacted a statute it is sometimes difficult to have a statute reopened for amendments. Indeed, this is the reason most frequently expressed for having placed the operational provisions in the regulations in 1972. The process was new and experimental. If changes were required in this new experiment, they could be made fairly quickly and with relative ease. But a decade and a great deal of experience have since passed. Sophistication and respect have replaced inexperience and suspicion. The process and the participants have reached a measure of maturity which now calls out for the next step in this evolution of collective bargaining to take place.

Moreover, there have been very few changes made to the structure over the past decade which indicates a lack of any real need on the part of the employer for continuing the present framework in regulations. Conversely, it could be argued that because there have not been many changes the fears of the Association are without foundation. But I have attempted to demonstrate that fear of rapid change to the process, or even the elimination of the process itself by Executive Council order, does not address the entire issue.

The Association perceives external pressures to have the structure placed in a statute. I am convinced that such a change would remove one of the serious irritants that persist.

Furthermore, if the need for flexibility relating to changes to the structure is no longer present, then, the disadvantages of placing the structure in a statute from the employer's viewpoint become even more remote.

Moreover, viewed from the employer's perspective, it would be possible to transfer the present structure into statute form without changing any of the operative provisions. That is, the substantive provisions presently found in the regulations could be enacted into a statute without change. I believe that the Association would not be totally satisfied with such a result because I am persuaded that it is seeking additional substantive rights in any enactment. Nevertheless, I am convinced that even without additional substantive rights being granted in a statute, many of the existing irritants would quickly disappear. In these circumstances the employer would have simply changed the foundation which supports the structure and nothing more. It is my opinion that such a change is not only warranted but is a minimum requirement for meaningful collective bargaining to continue in the relatively near future.

I do not necessarily advocate that there be no substantive changes to a statutory enactment. I merely wish to demonstrate that I fail to appreciate what disadvantages exist for placing the consultation and negotiation structure in statute form.

Finally, notwithstanding anything that has been stated above, unilateral changes to the regulations have taken place which have compounded the irritants that the present structure has fostered. One recent example of change was contained in the regulations which were promulgated on September 24, 1983. According to Association Officials, these new regulations contained significant changes in that they expressly denied probationary employees from grieving dismissals before the Grievance Review Board. This change was particularly disturbing to Association Officials and requires further elaboration.

Probationary employees did not always have the right to process grievances to adjudication over dismissals. article 27.02 of the April 1, 1975 to March 31, 1977 collective agreement between the parties contained the following:

> ...Employees in provisional, probationary, temporary and seasonal appointments with more than six months continuous service...shall not have recourse to the Grievance Review Board in cases of dismissal.

However, the language in the April 1, 1977 to March 31, 1978

collective agreement was changed to read:

> 26.02 Application
>
> These procedures apply to all employees covered by this Agreement as defined in Article 2, including permanent employees who are provisional or probationary in position only, except that seasonal and temporary and unclassified part-time employees with less than six months continuous service shall not have recourse to the grievance procedure.

This wording, with slight variations but without altering the meaning, remains and is included in Article 26.02 of the current collective agreement which is in effect between April 1, 1982 and March 31, 1984. Officials of the Association believe that any changes to the rights of probationers will not take affect until after March 31, 1984 but I am not so sure. Article 26.11 of the current collective agreement reads:

> For the purposes of these procedures, the decision given at the level immediately below that of the Board shall be final and binding upon the employee unless the grievance is of a type that may be referred to the Board pursuant to the Civil Service Act Regulations. If the grievance is of a type that not be referred to the Grievance Review Board, then the employee may request a full hearing at the final level of the Grievance Procedure.

There appears, therefore, to be a conflict in the wording of the collective agreement between Article 26.02 and 26.11 which may be an issue that the Grievance Review Board will be required to resolve.

The employer, on the other hand, has taken the position that probationary employees never had an express right to

grieve terminations to the Grievance Review Board although it concedes that the wording in the Civil Service Act and regulations was less than clear on the matter.[6] However, there was no express prohibition set out in the previous Act and regulations and it was probably inevitable that the issue would eventually be brought before the Grievance Review Board.

Indeed, the Grievance Review Board was required to address this issue on the right of probationary employees to take grievances before the Board in 1980. Two grievances were placed before the Board involving Mrs. Barbara O'Hare, a longterm temporary employee and Mrs. Jean MacConnell, a probationary employee. The employer raised a preliminary objection to the Board's jurisdiction to hear such grievances. The Board unanimously ruled that both temporary and probationary employees had access to the Grievance Review Board.

Matters remained unchanged until September, 1983, when the new Regulations were promulgated. I was informed, however, that the employer had attempted through negotiations over the past several years to remove the right of probationary employees from having access to the

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[6]Letter to the author from the Chairman of the Civil Service Commission, dated December 28, 1983.

Grievance Review Board.

When Association officials were given an opportunity to review the draft regulations in August and September 1983, they objected to the removal of probationary employees from having access to the Board over grievances.[7] Officials of the Association had argued that probationary employees should have access to the Board but acknowledged that the standard of review in such cases might be different from that used in reviewing dismissals of permanent employees. Nevertheless, when the new regulations came into force on September 24, 1983, they contained the following:

> 43. This Part applies to all employees except that probationary employees and employees of the executive division and casual division shall not have recourse to the Board in cases of dismissal.

Whether or not probationary employees should have access to the Grievance Review Board is not the issue. The issue is whether or not the framework for consultation and negotiation should be placed in a statute rather than in regulations. It seems to me that the foregoing discussion clearly demonstrates that such a need continues to exist today. I am convinced that this area is growing into one of the more serious irritants among Association officials and

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[7]The objection is contained in a letter addressed to Hon. Albert Fogarty, Minister responsible for the Civil Service from Brian Moriarity, General Manager of the Association

should be corrected.[8] In my respectful opinion, should no changes occur, there will be a steady move toward greater militancy. In my view, common sense dictates that such an irritant be removed and I can see no reason for not doing so. Moreover, what is being advocated is simply changing the structure or framework from regulations to statute. No change to the process has yet been suggested. Even without any change to the process being made, the removal of the structure from regulations to statute would be a step in the right direction for better labour relations. For all the foregoing reasons:

> I RECOMMEND THAT THE CONSULTATION AND NEGOTIATION STRUCTURE PRESENTLY CONTAINED IN REGULATIONS BE REMOVED AND PLACED IN A STATUTE.

Finally, I do not wish to leave the topic of access by probationers to an external adjudicative body before addressing the specific issue of whether or not probationary employees ought to be granted access to

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[8]The Association further claimed in its November 17, 1983 brief to me on page 38, the following:

> As a result of restraint in the area of salary expenditures by the Province of P.E.I., our members have faced the trauma of layoffs over the past three years. These layoffs have heightened our membership's concern over job security issues but they have experienced frustration in not being able to negotiate provisions to deal with this important issue. It has been even more frustrating to see the regulations regarding layoffs amended three times at the whim of the Civil Service Commission.

independent adjudication.

A probationary period is normally intended to give an employer an opportunity to evaluate an employee's overall capability to perform the required duties that the position demands of him or her. Moreover, the employee's attitude, mannerisms and capacity to adapt to the surrounding work environment and to colleagues may be equally important. The employee is made aware, at the time of engagement, that he or she will be assessed during this probationary period and if he or she can perform the required duties satisfactorily, etc., then he or she will be given a permanent position with the employer. If, on the other hand, he or she fails to perform satisfactorily, etc., then he or she will be terminated. Usually, the employer will review periodically the probationary employee's progress and discuss areas where improvements ought to be made. Eventually, before the probationary period ends, the employer will decide whether or not the probationer will be a satisfactory employee. If so, then permanent status is granted. If not, the probationer's service is terminated. The question to be resolved, is whether, in the latter situation, should the probationer have the right to appeal that termination to an independent tribunal to review the employer's rationale, etc., for the termination. This subject has caused considerable debate and has not been uniformly treated

across Canada. In other jurisdictions involving public service employees, probationary employees with six or up to one year's service can be terminated without recourse to independent adjudication.[9] In certain situations, probationers have won certain rights but fall short of their desired goals.[10] Probationary employees in the private sector must likewise undergo probationary periods during which time they do not have access to independent adjudication when they are terminated.[11]

On the other hand, there is some support for the position that probationers be granted the right to have their terminations reviewed by an independent tribunal. However, in these cases, such as in Larry Elliston and

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[9]See for example, Manitoba Civil Service Act, S.M. 1974, C.c110, S 15(1) & (2) where 6 months or longer is provided; B.C. Public Service Act, S.B.C. 1973, 2nd Session, C. 144, S.S. 39, 40, where 6 months is provided on new appointments to the service and 1 year is provided for promotions and in service appointments; Public Service Employment Act, R.S.C. 1970, C. P-32, S 28 And Regulation C.R.C. 1978, C 1337, SS 28-32 as amended; and most recently in Quebec see Public Service Bill 51, 1983, S. 14, where 6 months is provided and S. 19 provides for dismissal during the probationary period without other procedure or formality than 15 days notice.

[10]See the Queen in the Right of New Brunswick and Leeming et al. [1981] 1S.C.R. 129; Re Consolidated-Bathurst Ltd. and International Wood workers of America 1 LAC(3d) 10.

[11]These periods are usually of shorter duration ranging anywhere between 30 and 120 days, depending on the specific wording contained in the collective agreement. See Consolidated Bathurst supra, at page 14.

steelworkers,[12] it is acknowledged that the standard of review be less stringent than in those cases involving permanent employees.

But the steelworker's case involved employment of a probationer in the private sector. The probationer in the public service has been treated differently. The highwater mark in the public sector was probably reached in Jacmain v. Attorney General of Canada [1978] 2S.C.R. 15; (1978) 81 DLR(3d)1, when the Supreme Court effectively ruled that an adjudicator's jurisdiction was, for all practical intents and purposes, non existent in probationary termination cases. While the Public Service Employment Act states that a probationary employee may only be rejected "for cause,"[13] the Supreme Court held that "cause" may encompass many aspects upon which the adjudicator would not have jurisdiction to provide redress. In any event, public service unions now take the view that an adjudicator has virtually no jurisdiction to rule on rejections of probationers in the Federal public service.[14] The identical position presently exists in the Ontario public service

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[12] [1982] 2 CLRBR 241.

[13] R.S.C. 1970, C. P-32, & 28(3)

[14] See Goodale (No. 2) and Treasury Board, Jolliffe, Chief adjudicator, File #166-2-3050 and Fraleigh v. Treasury Board, Simmons adjudicator.

where the Grievance Settlement Board has held that it does not have jurisdiction to review "releases" of probationary employees.[15]

Now I recognize that one argument which may be advanced from time to time is a claim by the terminated probationer that the employer did not give him or her an adequate opportunity to demonstrate a capability to satisfactorily perform the duties. This usually results in the allegation that the termination was arbitrary or was made in bad faith. Fortunately, we are able to look at the experience that has existed since 1977 and to evaluate any allegations of arbitrariness or acts of bad faith. It will be remembered that Association officials believed they had a "right" to pursue terminations of probationers to the Grievance Review Board since 1977. I was not informed of any allegations of arbitrariness or bad faith, or of any other improprietary actions by the employer. I must, therefore, assume that the record to date has been satisfactory, or at least not unsatisfactory.

Accordingly, for all of the foregoing reasons, I must conclude that a period of evaluation of the probationer by

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[15]See Re Leslie and The Crown in right of Ontario (Ministry of Community and Social Services) 1979, 22 L.A.C. (2d) 126 (Adams); Re Bartello and The Crown in Right of Ontario (Ministry of Transportation and Communications) 1982, 5 L.A.C. (3d) 229 (Roberts).

the employer ought to be permitted without interference by an independent tribunal.

However, I am also persuaded that one year is too lengthy an evaluation period. Surely an employer can conclude whether a probationer will or will not be satisfactory in a much shorter period of time. I should think three months would be ample time but I am not familiar with all of the inner workings of government. Moreover, the majority of the other jurisdictions I have reviewed provide probationary period of six months. Therefore:

> I RECOMMEND THAT PROBATIONARY PERIODS FOR NEWLY HIRED EMPLOYEES BE NO LONGER THAN SIX MONTHS FROM DATE OF HIRING.

Type of Statute to be Enacted

Assuming that it is accepted that the structure should be placed in a statute, the next issue to be addressed is the selection of a proper statute. Should it be placed in the Civil Service Act or in some other statute? This issue was discussed extensively in the 1976 study where it was recommended that it be a statute separate from the Civil Service Act. The reasons set out in the 1976 study continue to be applicable today but with certain modifications. That study was critical of the dual roles being played by the Civil Service Commission. On the one hand a member of its staff chairs the employer's negotiation team while on the other hand it performs the function of protecting civil

servants through the merit system. Many continue to complain over these dual roles--claiming that they cannot be performed objectively.

I am convinced that the roles can, and most likely will, continue to be performed unchanged and I am persuaded that they can be performed in an objective fashion. However, I am also convinced that the appearance of objectivity is equally important. To accomplish this it is imperative that each role be explicitly detailed in order to eliminate confusion in the observer's mind over the roles that have been assigned to it and the particular role that it is performing at any given moment in time. In my view, the Civil Service Act should be restricted in its scope to describing the administrative functions of the Civil Service Commission.

The Civil Service Commission is the personnel agency in the civil service. It administers the merit system with all of its attendant requirements. It makes appointments to the civil service and must be concerned with layoffs. It therefore plays a significant role on behalf of the employer as well as on behalf of the civil servant. It probably cannot avoid playing dual roles in many respects.

But when a staff member of the Commission chairs the employer's negotiation team in negotiations with the Association for new collective agreements, there is bound to

be a certain amount of confusion raised in the minds of many. The Commission administers the Civil Service Act and makes Regulations under the Act, albeit with the approval of the Executive Council. In administering the merit plan it may be necessary to amend the Regulations from time to time to ensure that the plan continues to be in step with present day needs. This is appropriate and no criticisms can be levied on the Commission for carrying out those functions.

But when the Commission enters into the negotiation arena on the one hand and is the administrative agency overseeing the Act that contains the negotiation structure on the other, there are bound to be questions raised over the continued objectivity of the Commission. Even assuming that the Commission and its staff are totally objective, it is difficult for the parties on the other side of the negotiation table to perceive it in that way. It is logical for them to ask, "How can the Commission be the guardian of the merit system and the protector of the civil servant while at the same time representing the employer at the negotiation table?"

As stated earlier, I am convinced that the Commission will continue to perform both roles. That being the case, I believe that both roles will be perceived to be more objectively performed if the consultation and negotiation structure was placed in a statute other than in the Civil

Service Act. By restricting the Civil Service Act to detailing the administrative role of the Commission there would be created a definite demarcation line between the two roles. On the administrative side, the Commission could demonstrate that it protects the entire Civil Service through the merit system. It does not necessarily protect an individual employee in that system; but this has always been the case although that fact has sometimes been lost sight of. The Commission has always been responsible for establishing positions in the civil service as well as standards pertaining to appointments. It has also established safeguards so as to ensure that appointees receive certain protections. If these safeguards are abused by the employer which adversely affects an individual, then it is the Association which must pursue the matter.

An analogy to a trade union and employer in the private sector may be appropriate. Promotions and lay offs in the private sector are negotiable items and usually appear in collective agreements. When an individual is promoted or laid off out of seniority the union will often pursue a grievance claiming that the employer has violated the collective agreement. While the union may appear to be acting adversely to the member who has been promoted or retained in active employment, it is actually acting to uphold the integrity of the collective agreement for its

entire membership. I am certain that in many cases it would be difficult to convince the retained employee of that fact. Similarly, in the public sector, it is the Commission which usually establishes the standards which protect civil servants but it might require intervention by the Association for individual protection, whenever it suspects that the employer, not the Commission, has violated those standards.

I therefore view the Commission's main functions as being the preserver of the merit system, ensuring that appointments, promotions, lay-offs, etc., are carried out according to certain standards that have been established from time to time. These functions, which I refer to as administrative in nature, should be contained exclusively in the Civil Service Act and Regulations.

The second role performed by the Commission, that of representing the employer at the negotiation table, would, in my view, be more palatable to the Association and its members if the consultation and negotiation structure were contained in a statute over which the Commission had no special involvement. While a member of the Commission's staff would continue to participate in those negotiations, he or she would be doing so on the same basis or footing as any other participant on the management team. His or her department or agency would no longer be perceived to have a

special interest in the workings of the consultation and negotiation process, nor have to become involved when and if changes to the structure become necessary.

For all of the foregoing reasons:

I RECOMMEND THAT A PUBLIC SERVICE HUMAN RELATIONS ACT BE ENACTED WHICH WILL CONTAIN PROVISIONS FOR COLLECTIVE BARGAINING, GRIEVANCE ADJUDICATION AND RELATED PROVISIONS THAT ARE NORMALLY ASSOCIATED WITH HUMAN RELATIONS IN THE PUBLIC SERVICE.

Interest Dispute Resolution Mechanism

One issue that quickly assumed a dominant position during my interviews was the method of dispute resolution to be followed when deadlocks or impasses in negotiations occur. The present method provided in the structure is compulsory binding arbitration. Association officials informed me that it was not satisfied with such an approach and that the membership was seeking to gain the right to strike as an option to binding arbitration.

Essentially, the Association is seeking a dispute resolution mechanism that is similar to the Federal system or the one presently existing in the New Brunswick Public Service.[16]

The Association's views on the subject were presented to me in its brief in the following manner, beginning at page 45:

> The question of appropriate collective bargaining dispute settlement mechanisms for P.E.I. government employees has been a topic of discussion and study for a number of years, both at the national and the provincial level. This issue has prompted a great deal of deliberation by PSA members and their elected representatives. It has also been a subject of consideration at various annual PSA conventions. At our last convention, for example, delegates from across the province passed the following resolution:

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[16] Public Service Staff Relations Act R.& C. 1970, C P-35. Public Service Labour Relations Act, S.N.B. 1968, C.88.

Whereas we do not now enjoy the right to free collective bargaining, and

Whereas this is considered to be a right in our society today,

Therefore be it resolved that the PSA take whatever steps necessary to obtain this right for its members.

Our Association is convinced that the existing collective bargaining legislation contains restrictions on the right to free collective bargaining. To remove these restrictions, and to achieve full and free collective bargaining rights we believe that the paternalistic attitude inherent in the P.E.I. Civil Service Act Regulations must be abandoned. New approaches must be accepted by the legislators, including new methods of dispute settlement.

The membership of this organization want the collective bargaining legislation to be written to provide for the negotiation of an agreement which the parties have freely agreed upon. Today, our members in the civil service bargaining unit enter negotiations knowing full well that the parties do not have free collective bargaining because if an impasse is reached during negotiations, the disputed issues must be submitted to an arbitration board, which is crippled by atrocious restrictions on the scope of arbitral items and by the factors to be considered in making an award.

The government's attitude, unfortunately, is still rooted in an old style of collective bargaining. Times have changed and employee attitudes have changed. Our members in the civil service bargaining units see their brothers and sisters in other PSA bargaining units and in other unions covered by the P.E.I. Labour Act freely negotiating all matters of concern to them as workers, with the right to strike to back up their proposals....

In keeping with the right to strike, we recognize that some public services are essential and should not be disrupted; to do so would be to endanger public health or safety. However, this is a matter which has been dealt with effectively in other public service jurisdictions where the detailed provision of essential services has been designated as a subject for negotiations at the bargaining table. This approach can work here, too. If a dispute arises over what is

or is not an essential service the matter can be placed before a tribunal such as the Civil Service Labour Relations Board for a ruling. It would be unreasonable and unfair for the government, as the employer, to rule on such a sensitive issue.

When the proper dispute settlement mechanisms are in place, both parties assume the full responsibility for their actions, including the consequences of being unable to reach a negotiated agreement. A restrictive procedure, such as that presently contained in the Civil Service Act Regulations, impedes rather than improves the bargaining process.

While we are committed to the inclusion of the right to strike in the legislation's dispute settlement procedures, we also believe that this right should not abridge the employees' right to choose other, less unilateral, methods of dispute settlement, such as arbitration.

In other words, while it is our position that employees must have the <u>right</u> to strike, there must be no <u>compunction</u> on them to choose this course of action....

This demand by the Association came as a complete surprise to the employer. There had not been any such previous demand and the employer's representatives gave me a copy of the latest brief presented by the Association to the Premier and his Cabinet on December 2, 1982, to show that no such demands were being pursued by the Association at that time.

In my view, the approach that is taken to this fundamental issue is crucial. The employer adopts the position that if strikes and lockouts are to become part of the collective bargaining process, the whole relationship between the parties must be carefully reassessed.

In this connection, I was informed that at this moment, only deputy ministers and a few other employees involved in labour relations are excluded from membership in the Association. It has generally been considered that a large number of exclusions were unnecessary. However, I was informed that this issue takes on a new meaning if certain groups, such as the correctional service employees, have the right to strike. The relationship immediately assumes a we-they attitude. Supervisory people would be required to maintain services along with a number of designated members in the Association. The continued membership of supervisory personnel would, according to the employer, be incompatible with their duties to the employer. Accordingly, the employer would be seeking many additional exclusions. I was informed that probably four to five hundred additional exclusions would be sought if the relationship were to follow such a course of action.

When officials of the Association were apprised of the employer's reaction, they informed me that the reason for making such a demand was due to the complete frustration that had developed because of the restrictions which the employer's negotiation team had placed on the scope of negotiations.[17]

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[17]The scope of negotiations will be discussed later in this report.

The present Regulations appear to provide a broad range of negotiable items. Section 756 reads:

> 76. The authorized representative may negotiate with the employer on terms and conditions of employment, which, without limiting the generality of the foregoing, include
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> (a) rates of remuneration;
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> (b) hours of work;
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> (c) overtime and other premium allowances for work performed;
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> (d) benefits pertaining to time not worked including paid holidays and paid vacations;
>
> (e) group life insurance;
>
> (g) procedures applicable to the processing of grievances;
>
> (g) conditions applicable to leaves of absence for purposes other than
>
> (i) standing for election for any public office
>
> (ii) political activities, or
>
> (iii) training or development; and
>
> (h) the rate payable to an employee for distances travelled when he is required to use his own vehicle on the employer's business;

See p. 40 of the paper, where we have again inserted Section 76, and such other matters as may be mutually agreed upon by the parties.

The arbitration board is restricted to deciding the following, as contained in Section 82(4) of the Regulations.

82 (4) The board of arbitration is empowered to make awards on

(a) those matters detailed in clauses 76(a) to (h);

(b) such other matters presented by mutual agreement of the parties.

It is to be noted that mutual agreement is required between the parties to present any issues to the board outside of the matters detailed in 76(a) to (h). Therefore, the parties may agree to negotiate over additional issues but may not present those issues to the board if they fail to mutually agree to do so. Accordingly, it is fair to say that the arbitration board's jurisdiction may be more circumscribed than is the scope of negotiations.

It is my understanding that the true gravaman of the Association's frustrations is the restrictions that the employer has placed on matters that it is prepared to negotiate over as well as matters that it refuses to agree on being referred to arbitration. This being the case, the Association is turning away from the present dispute resolution process in preference to withdrawing services if the employer continues to be intransigent in its refusal to negotiate over a wide variety of issues.

I stated earlier that this issue had assumed a dominant position during my interviews. It has continued to be a major concern for me.

The employer claims that such a fundamental change in the consultation and negotiation process would cause significant changes being made to the relationship that has existed over the past decade. It would reassess its position as an employer and seek to carve out a much larger management team to ensure that services to the public are continued in the event of a strike. It does not advocate such a change.

The Association, on the other hand, has become frustrated with the present system of negotiations and seeks new ways to get new issues on the negotiating table.

After having seriously considered this very fundamental issue, I have concluded that the status quo be maintained at the present time. There are two basic reasons for reaching such a conclusion. I question whether the Association has seriously considered all of the ramifications that such a change would entail. Secondly, I question whether the Association is firmly committed to pursuing such a course of action at this time. My reasoning follows.

It was obvious to me that the Association has considered the possibility of losing members and that it is firmly opposed to such a result. In its brief presented to me[18] and supplemented by discussions with me, it specifically

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[18]At pp. 23-27.

stated that the status quo should be maintained on the issue of exclusions. That is, no further exclusions are warranted. Frankly, the reaction of the employer to seek several hundred additional exclusions surprised officials of the Association. My impression is that the officials had not contemplated such a reaction. Assuming that the employer would pursue such a course of action and succeed in obtaining only half of the sought after exclusions, the impact that would be felt by the remaining twenty-seven or eight hundred members would be significant. In light of such a reaction by the employer, made known to the Association by me for the first time, it would seem reasonable for the Association to further assess its position on this issue before proceeding further.

The Association also addressed the issue of having an independent body determine what positions should be designated essential in the event of a strike. It has been recognized that strikes in the public sector ought not be permitted to shut down a service when its continuation is vital to the health, safety, or security of the public.[19] So a scheme has been used whereby certain public service positions are designated essential in the event of a strike and the persons occupying those positions are required to

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[19] N.B.P.S.L.R.A. S.50(1) P.S.S.R.A. S. 79.

remain at work during a strike.[20] Usually, the body that has been given this responsibility of determining what is and what is not essential has been the Public Service Labour Board which administers the public sector collective bargaining act. In its brief,[21] the Association requested that such a body be granted that responsibility in a new statute to be enacted for collective bargaining purposes. But the situation as described above no longer pertains today because of Re Canadian Air Traffic Control Association and the Queen in Right of Canada 134 D.L.R.(3d)577(S.C.C.) decision. That decision effectively removed the Public Service Staff Relations Board from effectively performing the designation function and placed it in the hands of the employer. Whether or not a similar result would follow in a provincial setting is not known. However, there has been a great deal of speculation over the viability of the right to strike in the public service since the CATCA decision. Conceivably, the employer could designate all positions as being essential and thereby nullify the right to strike without having to change the legislation. The issue in the Federal Public Service has remained fairly dormant since

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[20]Ibid, N.B.P.S.L.R.A., S.50(2),(3)(4) and (5). P.S.S.R.A.S. 79(1).

[21]Op. cit., p. 48.

CATCA but anyone who is contemplating a similar collective bargaining structure should be conversant with its inherent pitfalls. It is my distinct impression, gained from the Association's brief and in discussions with me by its officials, that the significance of the CATCA decision has not been fully digested. If I am wrong in my impression (which I believe I am not), then I am surprised that the Association would be pursuing such a course to follow in the manner that was presented to me.

Another reason why I express doubt over the Association's commitment to pursuing a right to strike is found in its 1983 annual convention. The convention passed the following resolution:

> Whereas we do not now enjoy the right to free collective bargaining, and
>
> Whereas this is considered to be a right in our society today,
>
> Therefore be it resolved that the PSA (association) take whatever steps necessary to obtain this right for its members.[22]

Frankly, I find it rather difficult to interpret that resolution as demanding the right to strike. Surely, if that was the intention of the framers of the resolution,

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[22]Ibid., p. 45.

they could have expressed themselves more clearly.[23] It leaves me questioning the seriousness of the membership in its demands for the right to strike.

Another factor which I have considered is the experience that has transpired in negotiations since 1972. In all of that experience it has not once been necessary to proceed to arbitration. While successful negotiations have required the assistance of a conciliation officer on occasion, they have always managed to reach a collective agreement short of arbitration.

For all of the foregoing reasons, I am not persuaded that the Association harbours a strong desire to gain striking rights at this time. To my knowledge it has never demanded such a right of the employer, at least not in recent times. Furthermore, in my view, the issue has not been thoroughly canvassed within the Association nor has a true consensus on the issue emerged. Therefore:

> I RECOMMEND THAT COMPULSORY BINDING ARBITRATION CONTINUE TO BE THE DISPUTE RESOLUTION MECHANISM EMPLOYED IN RESOLVING DISPUTES THAT BECOME DEADLOCKED IN THE CIVIL SERVICE.

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[23] When I questioned Association officials as to its precise meaning, I was informed that the wording generated considerable debate on the convention floor. Furthermore, the vote was taken only after officials gave their interpretations as to its meaning; and I was assured that the membership fully understood the meaning of the resolution. I remain unconvinced.

Exclusions

The topic of exclusions has already been alluded to briefly. I stated in the 1976 study that the issue determining exclusions should be vested in the Board that administers the proposed statute. My reasons as stated in the 1976 study remain unchanged. I can do no better than refer the reader to pages 90-95 of that study.

Scope of Negotiations

On pages 10 and 11 in my 1976 report I stated:

> The scope of negotiable matters appears to be quite broad....I was not informed that any concern exists over restrictions on negotiable subjects."

The Association does not disagree with that statement but argues that it does not reflect the existing situation in 1983. The experience since 1976 reveals that the Association has met employer resistance to its attempts to expand the negotiations to new issues. This experience is best described by looking at the contents of previous collective agreements. The first collective agreement between the parties was for the period April 1, 1973 to March 31, 1975. It contained eighteen articles. The second collective agreement; for the period April 1, 1975 to March 31, 1977, had the number of articles doubled to thirty-six. With such an increase in the number of issues in the second collective agreement, it is no wonder that I found no discontentment existing in 1976. But matters have remained

static since that time. The current collective agreement for the period April 1, 1982 to March 31, 1984, contains a preamble and thirty-five articles. The typical heading of the articles that are found in the current collective agreement reads as follows:[24]

Alphabetical Index of Articles of Collective Agreement

Article #	Name of Article
a 17	Acting Pay
33	Agreement Reopener
6	Association Security
8	Bulletin Boards
16	Callback
a 14	Compensation on Promotion by Competition or Reclassification
32	Continuance of Operations
31	Correspondence
F 27	Discipline
5	Employee Rights (Discrimination)
F 26	Grievance Procedure
e 25	Group Insurance
b 9	Hours of Work
a 12	Increment Increases and Anniversary Dates
7	Information
19	Injury on Duty
1	Interpretation and Definitions
30	Joint Consultation
4	Management Rights
h 34	Motor Vehicle Allowance
c 13	Overtime
	Preamble
20	Protective Clothing and Safety Equipment
a 11	Rates of Pay
2	Recognition

[24]The letters to the left of the article number reflect what I consider to be the appropriate or corresponding subclauses of Section 76 in the Regulations which enumerates permissible negotiation topics.

	29	Safety and Health
	3	Savings Clause
	18	Severance Allowance
b	10	Shift Work
G	23	Sick Leave
G	24	Special Leave
	15	Standby
d	22	Statutory Holidays
	35	Term of Agreement
	28	Transfer
d	21	Vacations

The allowable negotiable matters are contained in Section 76 of the Regulations and have been reproduced earlier. But I again reproduce them here for convenience purposes.

> 76. The authorized representative may negotiate with the employer on terms and conditions of employment, which, without limiting the generality of the foregoing, include
>
> (a) rates of remuneration;
>
> (b) hours of work;
>
> (c) overtime and other premium allowances for work performed;
>
> (d) benefits pertaining to time not worked including paid holidays and paid vacations;
>
> (e) group life insurance;
>
> (f) procedures applicable to the processing of grievances;
>
> (g) conditions applicable to leaves of absence for purposes other than
>
> (i) standing for election for any public office,
>
> (ii) political activities, or
>
> (iii) training or development; and

(h) the rate payable to an employee for distances travelled when he is required to use his own vehicle on the employer's business;

and such other matters as may be mutually agreed upon by the parties.

In my respectful opinion, the parties have negotiated over a number of topics that are not delineated in the regulations. Instead, they have utilized the catch all clause at the end of the section and have mutually agreed on their inclusion. It seems to me that the situation existing in 1976 reflected a measure of flexibility and accommodation. The parties were amenable to carrying on negotiations over topics that were not enumerated in the regulations and including them in collective agreements.

But changes have taken place since 1976. As I understand the situation, the employer has become somewhat inflexible to change whereas the Association's demands for the negotiation over additional topics have increased. For example, the Association sought to have the 1981-82 collective agreement include such topics as contracting out, promotions, layoff and recall, and technological change.[25] The employer's negotiating team refused to discuss such items. Again, in negotiations for the 1982-84 collective agreement the Association attempted to pursue such items as

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[25] As contained in the November 17, 1983 brief of the Association, at p. 36.

job opportunities, layoffs and recalls, technological change, meal allowances and leaves of absence for political activity, but was met with a refusal to discuss such topics by the employer's negotiating team.[26]

Clearly, the employer's negotiating team cannot be criticized for refusing to negotiate over leaves of absence for political activity because it is expressly prohibited by section 76(g)(ii) in the Regulations. Whether <u>discussion</u> of the issue would amount to <u>negotiation</u> is perhaps an interesting question which I shall refrain from entering into. However, I firmly believe that such a topic would be appropriate for consultation and perhaps could have been redirected to a consultative committee for discussion. Instead, I believe that what transpired added further frustration to an already frustrating experience from the Association's point of view. Moreover, the issue of meal allowances could easily have been discussed through mutual agreement and the failure to do so conveys the impression that a degree of rigidity has crept into negotiations which is unhealthy.

In my view, whenever an element of rigidity or inflexibility becomes a part of any collective bargaining process, a corresponding measure of frustration emerges. If

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[26]Ibid.

left unattended, the process will grow more stressful until certain changes are forced to occur.

Additionally, the degree of frustration is likely to rise more rapidly in the current state of affairs where restraint legislation over compensation abounds in Canada.[27] Public service unions realize that large salary and benefit demands are futile in the present economic climate and so must turn to other demands. Indeed, such a change in demands has received comment in the Current Industrial Scene in Canada 1983 at p. 292.[28]

> Demands for higher wages will be tempered by the recent severe and prolonged recession, slack labour markets, heavy financial losses in certain firms and industries and the restraint programs in a number of public sectors. Collective bargaining settlements are likely to average about 6 to 7 percent in 1983.
>
> Reflecting current high rates of unemployment, expected to persist throughout 1983, greater importance is likely to be placed on job security provisions to protect jobs and cushion the shock of layoffs, including such measures as advance notice, advance consultation, improved seniority and job transfer provisions, restriction on overtime and the contracting out of work, layoff protection for long-service employees, restrictions on unilateral plant relocation, technological change provisions, training and retraining, SUB and severance pay programs, and voluntary early retirement with full pension rights.

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[27] Prince Edward Island has not escaped this imposition of restraint in its public service, see the Compensation Review Act, assented to on June 23, 1983.

[28] Industrial Relations centre, Queen's University at Kingston, Ontario, W.D. Wood and Pradeep Kumar, editors.

But countervailing pressures continue to remain. Governments have traditionally limited the scope of negotiations while public service unions have sought expansions. A number of articles have been written on the theory of restricted bargaining.[29] Mr. Finkelman had the following to say:

> SCOPE OF BARGAINING
>
> 70. The main theme of the representations made by the bargaining agents was that the scope, i.e., the legally permissible subjects, of bargaining under the Public Service Staff Relations Act is glaringly inadequate when compared with the subjects on which trade unions are able to bargain under private sector legislation, and that public servants are thereby denied the opportunity to participate in a meaningful fashion in the determination of important aspects of their working conditions. They suggested the limitation on the scope of bargaining is one of the major impediments to the speedy and peaceful settlement of many disputes....In some instances, the impediments have been side-stepped by written or oral assurances given by the employer that it would exercise its managerial functions in a specified manner. That the employer felt impelled to give such assurances is an acknowledgement by the employer of some sort of moral or social obligation to those particular employees. However, the very fact that resort had to be had to such stratagems to bring about a settlement of a dispute, it is said, demonstrates the need for broadening the scope of bargaining so as to include therein, wherever possible, those matters that must be considered as being matters of legitimate concern to the employees over which they ought to have some measure of control....

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[29] J. Finkelman, Q.C., Employer-Employee Relations in the Public Service of Canada, Proposals for Legislative Change, Part 1, Ottawa, Information Canada, p. 56. Mr. Finkelman was the first Chairman of the Public Service Staff Relations Board. This board administered the Public Service Staff Relations Act.

73. In the private sector, over the years since the Wagner Act (the ancestor of labour relations legislation as we know it today not only in the United States but in Canada as well) first became law, the scope of bargaining, i.e., of shared decision-making, has been progressively broadened until today it is fair to say that little is excluded from the legitimate scope of bargaining--in short, practically everything is bargainable. In so far as bargaining in the private sector is concerned, although one would hope that employers and trade unions do take the public interest into account, it is inevitable that the private interests of the parties are uppermost in their minds when they are sitting across the table from one another. Neither of them separately or collectively has the ultimate responsibility for protecting the public interest. Standing apart from the parties, there is always the government, which has the power and the responsibility, acting through Parliament, to impose restrictions upon the parties if it becomes apparent that the public interest is seriously endangered by the actions of the parties or either of them. In public sector bargaining, the government is not only a party to the bargaining process; it is also the executive arm of Parliament--the ultimate guardian of the public interest, the body which primarily has the responsibility for basic policy-making decisions.

74. As Arvid Anderson, Chairman of the New York Office of Collective Bargaining, has pointed out,

> The major issue at the public bargaining table is the same as in the private sector; more wages, fringes and economic benefits. However, public employee unions are also seeking to use collective bargaining as a means of effectuating social change and for determining public policy questions...
> ...Teachers...want to bargain about the school curriculum or class size; welfare workers...want to bargain about the level of benefits of welfare recipients; interns...want to bargain about the quality of medical services offered; nurses...policemen...want to regulate the number of men on a patrol or their authority to make arrests; and air controllers...demand the right to bargain about their equipment and workload....

75. No matter what extensions are made in the scope of bargaining from time to time, some subjects will probably remain in which the public interest will be paramount to any interest that the employees in the Public Service and the organizations representing them may have in bargaining, where the protection and furtherance of these interests cannot be left to shared decision-making by the employer and the employee organizations through bargaining, but must be examined and established by those who are answerable to the electorate. As one scholarly observer of the scene has put it "One ought never to confuse the wishes of a limited interest group like a union with those of the entire electorate."...Class size in schools, case load for social workers and doctors, for example may be legitimate subjects of bargaining to the extent to which they are aspects of the work load that employees are required to perform, but not when demands with regard to these matters are presented as an aspect of what constitutes good educational policy, or good welfare policy or good medical policy. The quality of education, of welfare and of medical care ought to be decided only through the normal legislative process. At times, it may be very difficult to draw the line between what can be entrusted to collective bargaining and what must be reserved to be dealt with only through the democratic process of legislation. But the line has to be drawn nevertheless to stay within the system as we have it.

Others have advocated that the scope of bargaining be broadened considerably.[30]

> The Scope of Bargaining
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> During its investigations, the Commission found that the practice in many other public jurisdictions is to exclude by statute many items from the collective bargaining process. However, it is the Commission's view that in order to make collective bargaining a meaningful process the subject matters for negotiation

[30] R. D. Higgins, Making bargaining work in British Columbia's Public Service: Report fand Recommendations of the Commission of Inquiry into Employer-Employee Relations in the Public Service of British Columbia, Victoria, B.C., December 1972. Beginning at p. 42.

would be resolved if the recommendation that the scope of negotiations be broadened as set out earlier be adopted. It would then be up to the parties to negotiate over such issues. Accordingly, with one exception, I do not consider it to be necessary to discuss those claims further.

The one exception pertains to leaves of absence for political activity. At the present time the Civil Service Act prohibits[31] any person who has been appointed to the service by the Civil Service Commission from participating in political partisanship and there is no reference in the Act to possible leaves of absence for persons desiring to get involved in active politics. A violation of the section subjects a person to dismissal. Most other jurisdictions have set out ground rules whereby civil servants can obtain leaves of absence to enter politics with rights to return to the service after having served as a politician.[32] The Association believes that its members ought to be granted similar rights. I agree. Every citizen ought to be permitted the right to participate in running for elective

[31] Section 39.

[32] See for example, the Public Service Act, R.S.O. 1981, C. 418, SS 11 and 12; the Civil Service Act S.M. 1974, C. c110, S 44; and the Public Service Employment Act, R.S.C. 1970, C. P-32.
See also the 1983 Bill introduced into the Quebec National Assembly in 1983, the fourth session of the thirty-second legislature, especially SS 12, 23-25.

office and retaining certain securities to future employment when that participation ends. However, I do not agree that the issue should be negotiated because there are others employed in the Civil Service who do not come within the bargaining unit but who likewise may wish to take a leave of absence and run for elective office. Therefore, I believe that the appropriate vehicle for such a provision would be the proposed Civil Service Act where it would be administered by the Civil Service Commission. In this manner, all civil servants would be afforded the same opportunities.

Conclusion

Collective bargaining in the Prince Edward Island Civil Service has existed for approximately thirteen years. I was fortunate in being permitted to review the first few years of that experience. I found in 1976 that both parties were generally pleased with the experience that had transpired to that time.

But I now find that general satisfaction with the process has given way to frustration on the part of the Association and to a degree of inflexibility on the part of some employer representatives. In my view, the parties have enjoyed a fairly healthy experience to date but I predict that unless certain changes occur in the relatively near future the experience of the past will deteriorate fairly

must cover virtually all issues that are of concern to the employees. Placing a long list of items "out of bounds" can only inhibit the effectiveness and relevance of the whole negotiating process.

Consequently: The Commission recommends that the scope of bargainable issues be as broad as possible.

In defining the wide scope recommended, there are two possible approaches. One way is to list the items that should be subject to bargaining; the other is to spell out the items that are excluded from bargaining, the rest being, by implication, negotiable. The Commission chose the latter approach as being the more practical.

It is generally accepted today that recruitment and promotion within the public service should be on the basis of merit rather than political or other favouritism. Consequently: the Commission recommends that the merit system in the public service of British Columbia be excluded from collective bargaining....

After much discussion on the issue of superannuation and its appropriateness as a bargaining item: The Commission recommends the subject of superannuation be excluded from the collective bargaining process. This situation should be reviewed after a reasonable period of time. It is further recommended that the Civil Service Superannuation Act be amended to provide for the establishment of a seven-member joint committee composed of three representatives from the employee organizations and three representatives appointed by the employer. A neutral chairman should be selected by the two parties concerned. The proposed joint committee should be responsible for making recommendations to government on needed amendments to the superannuation plan. At the same time, the committee should have the responsibility for overseeing the investment of the very large sums of money in the superannuation fund, with a view to ensuring optimum returns to the fund. For the sake of consistency, it is also recommended that the Civil Service Superannuation Act be renamed as the Public Service Superannuation Act.

Apart from the aforementioned exclusions, all other matters would be negotiable.

The prevailing situation of restricted bargaining in the Island setting has created a sense of frustration to the Association. Certain matters are precluded from negotiation by regulation. Other matters are negotiable by mutual agreement but are not necessarily arbitrable. Efforts to achieve mutual agreement have increasingly been met with refusals which have tended to dampen the entire process. In my view, it is time to seriously reconsider the issue of scope of negotiations. The parties have experienced collective bargaining for over a decade. During that period they have become more sophisticated in their relationships with each other. Surely, what might have been considered unthinkable at the beginning of the seventies has become commonplace today. The employer must seriously consider what avenues it can open to negotiation and take positive steps in opening those avenues. To refrain from doing so will inevitably aggravate existing problems which are unnecessary and avoidable.

Naturally, there will continue to exist certain areas over which the government will wish to retain unilateral determination. Some of these areas include the merit system, superannuation, the organization of government services and classification of the civil service. There may be other areas to be excluded, but such exclusions should be few in number.

The draft statute that is included as Schedule B details my views on this subject and ought to be referred to when considering this subject matter further.

Scope of Jurisdiction in Arbitration Tribunals

I wish to stress in the strongest terms possible that arbitration tribunals be authorized to resolve all issues that are negotiated from time to time. To permit negotiation over an issue and then to prohibit the tribunal from resolving it is creating false hopes and expectations which can only lead to eventual rejection of the process. I can see no valid justification for creating such roadblocks and they should be avoided. Therefore:

> I RECOMMEND THAT ARBITRATION TRIBUNALS BE AUTHORIZED TO RESOLVE ANY ISSUE THAT FAILS TO GET RESOLVED AT THE NEGOTIATION TABLE.

Criteria for Arbitration Tribunals

It is important to realize that each of the parties involved in any arbitration process cannot operate in a vacuum. The two adversaries must be guided by certain criteria if they are to take issue with one another. Without any criteria whatever they could conceivably proceed along separate paths and never really join issue nor assist the arbitrator in the task that lies before him. If such circumstances were permitted to exist, the arbitrator would be placed in an untenable position when he later devoted his

attention to resolving the issue or issues.

Criteria is equally important for the arbitrator. It creates a sense of direction which he can use as a guide in flushing out the real gravamen of the issues that are before him. If one or the other, or both, parties stray too far afield he can insist that they get back on track. Therefore, I am convinced that there should be meaningful criteria established to guide arbitration tribunals in the resolution of disputes.

PRESENTLY, SECTION 85 OF THE REGULATION CONTAINS A PROVISION WHICH ARBITRATION BOARDS ARE TO CONSIDER WHEN RENDERING AWARDS AND OUGHT TO BE INCORPORATED IN THE STATUTE AND I SO RECOMMEND. It reads:

> 85. Recognizing the general aim of providing incomes for employees which are fair to both the Prince Edward Island taxpaying public and to the civil service, the board of arbitration, in the conduct of proceedings before it and in rendering an arbitral award in respect of a matter in dispute, shall consider
>
> (a) on a priority basis where in the opinion of the arbitration board there is validity, a fair comparison between the relationship of incomes and other benefits for employees to those available to persons doing similar work,
>
> (i) in the Prince Edward Island private sector for better paying employers with modern employee relations and structures suitable for fair comparability purposes, and
>
> (ii) in other governments and companies suitable for fair comparison in other Atlantic provinces, particularly when adequate comparisons are not available on Prince Edward Island, but having regard to the varying economic

capabilities of the provinces;

(b) in addition as the arbitration board in its opinion may consider relevant

(i) the requirements to obtain and retain competent employees,

(ii) the desirability of maintaining appropriate relationships in the conditions of employment as between classifications in the public service, and

(iii) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed, and the nature of the services rendered;

(c) where current remuneration of those doing comparable work outside the civil service can be shown to be based on pay rates in the civil service, these comparisons may not be considered in isolation from other comparisons in making awards;

(d) such other factors as the board may deem applicable without significantly diminishing the requirements of clause (a).

The Employer Representative at the Negotiation Table

The 1976 study was critical of the employer for having the Civil Service Commission staff involved in negotiations on behalf of the employer. The following comments appeared, beginning at page 27:

(i) The Employer

Earlier I alluded to the fact that the employer is presently represented at the negotiation table by several groups. They include the Department of Education; the Civil Service

Commission; the Hospital Services Commission; the Association of P.E.I. Hospitals; and, the Association of P.E.I. School Boards. In addition, the Secretary of Treasury Board (equivalent to a Deputy Minister) devotes a great deal of time to the negotiation process and being a member of each group provides the common denominator to the entire negotiation process. The negotiation process is very time consuming. In 1976, the hospital negotiations involving nurses began in April and did not conclude until October. Other sets of hospital negotiations began in January and likewise did not conclude until autumn.

I am informed that the Secretary of Treasury Board does not chair the negotiating committees for the employer. Instead, this role is performed by others. For example, in 1976, the chairman for the Health Negotiating Agency was Dr. L. Prowse, who is also Chairman of the Hospital Services Commission. The chairman of the employer negotiating committee in the Public Service was Mr. G. Contello, a staff member of the Civil Service Commission. In the case of the teacher negotiations, the chairman was one of the directors from the Department of Education.

The above situation warrants two comments. First, I am of the view that the Civil Service Commission is being cast in a totally unacceptable role by having its chairman and several directors assume a high profile in actively participating in the negotiations on behalf of the employer....

Secondly, while the Secretary of Treasury Board does not chair the negotiating committees he must nevertheless devote considerable time to the negotiation process. It is to be remembered that he is the only person who serves on all of the negotiating committees for the employer. In the result, the secretary cannot devote his entire energies to the normal requirements of Treasury Board nor to the consultation and negotiation process.

Moreover, by having different individuals from various departments assume the duties of chairing the negotiating committees robs the various departments of key personnel over lengthy periods of time which must result in hampering

other programs that such departments must perform. For example, I discovered that negotiations in the hospitals commenced in January 1976 (with the exception of nurses) and ended in October. Two members of the employer's negotiating team were each assistant administrators of two Charlottetown hospitals. One informed me that during the first few months of negotiations they performed their regular duties during the day and attended negotiation sessions at night. When they objected to such a strenuous routine, negotiations switched to days. During the last two months of negotiations they spent two or three days each week on negotiation matters.

Contrasted to the above situation are the organizations on the staff side. Every bargaining agent, except the General Hospital Employees Association, has a full-time staff member who devotes his or her entire services to representing the affairs of the association or union, whatever the case may be.

In my view, the employer must devote more energy to ensuring that its position is being consistently fostered. I believe the time has now arrived when a person should be employed on a full-time basis to represent the employer in all of its negotiations. Such an individual would work closely with all employee bargaining agents throughout the terms of collective agreements and would be in a better position to evaluate the successful features of the relationship as well as the not so successful features. Hopefully, the individual would be well suited to improve the relationship.

For the reasons expressed earlier in the Type of Statute to be Enacted section, I believe that a separate statute would eliminate any criticism I would otherwise have about a staff member of the Civil Service Commission chairing a management negotiation team.

The 1976 study also suggested that an individual be engaged to chair all negotiations for the employer and that

he or she have Deputy Minister status. While certain changes occurred following the release of the earlier study, I no longer believe that such an individual be engaged to chair the management negotiation teams. My reasons follow.

Following release of the 1976 study an individual who had experience in labour negotiations was engaged by the province, but not at the Deputy Minister level. Nor was she to be chairperson of the management negotiation teams. This individual was to provide a common link in all negotiations in the Public Sector. Unfortunately, within one year she had resigned. Several reasons were advanced for her resignation. One is attributable to a lack of understanding by the individual of budgetary preparations. She had been assigned duties within treasury board and because of her lack of familiarity with budgetary analyses she was quickly isolated from the main stream of activity within treasury board. Another reason for the failure is attributable to the hierarchical level at which the individual was placed. Because she was not engaged at the Deputy Minister level, she failed to acquire sufficient authority to carry out the duties that were expected of her. Finally, she had been unable to garner the support and confidence of cabinet ministers who had to make decisions from time to time during the negotiation process.

Another change which followed the 1976 study was the relinquishment by the secretary of treasury board of the need to attend all negotiation sessions for each group of negotiations. Rather, he began involving others within treasury board. Members of his staff began attending negotiating sessions where they would provide budgetary information to the management team. From all reports this approach has been fairly successful. More staff members in treasury board are becoming familiar with collective bargaining and all of its attendant problems while at the same time bringing expertise in the costing of various proposals to the negotiation tables, etc. But the problems remain due to a lack of coordination among the various negotiation tables. I realize that my mandate involves the Civil Service only, but I believe it would be helpful to outline the names of the chairmen and treasury board representatives during the last round of negotiations in various public service groups. Mr. George Contello, a staff member of the Civil Service Commission, chaired the management team in the Civil Service negotiations in 1982. Mr. Barry MacMillan (then budget analyst and now secretary of treasury board) was the representative from treasury board. Mr. Ron Rice from Education chaired the Educational negotiations while Mr. Gary Mancuso was the representative from treasury board. Mr. Wayne Carue, from the Queen

Elizabeth Hospital, chaired the Health and Social Services negotiations while Messrs Barry MacMillan and George Likely represented treasury board. The point being made here is the fact that there are several staff members from treasury board who are involved in negotiations. However, this system continues to lack coordination. By coincidence, Mr. MacMillan attended the bargaining sessions of two negotiation groups in the 1982 negotiations. I remain of the view that it is important to have one representative from treasury board attend all negotiations on behalf of the employer. If this is not possible, then, it becomes imperative that the attendees from treasury board have frequent briefing sessions in order to keep each other apprised of the proceedings and prevailing attitudes at each negotiation table. There have not been briefing sessions to date due to the heavy workload demands being placed on the individuals involved. But briefing sessions are not the total answer. I suggest that briefings could not accurately convey the prevailing attitudes at the table. The opinions I received from management representatives were virtually unanimous in favor of having greater coordination on the part of management at the negotiation tables.

I REMAIN OF THE VIEW THEREFORE AND RECOMMEND THAT THE EMPLOYER SHOULD HAVE ONE INDIVIDUAL FROM TREASURY BOARD PRESENT AT EACH SET OF NEGOTIATIONS. OF COURSE THAT INDIVIDUAL MUST BE EXPERIENCED IN LABOUR NEGOTIATIONS AS WELL AS BEING COMFORTABLE WITH FINANCIAL FIGURES.

However, the experience since 1976 has persuaded me that such an individual need not be appointed at the deputy minister level. Each set of negotiations is chaired by an individual experienced in labour relations pertaining to the specific group at that table. To have someone from treasury board chair all of the management teams would probably create a measure of resentment. What is more important is the need to have greater coordination than presently exists. Moreover, the individual from treasury board could be an effective resource person from a financial point of view at each set of negotiations while at the same time bringing a measure of expertise from the viewpoint of a labour negotiator.

IT IS NOT RECOMMENDED THAT THE INDIVIDUAL FROM TREASURY BOARD CHAIR THE NEGOTIATION TEAMS.

Consultations

The current collective agreement contains the following provision.

30.01 The employer agrees to continue consulting with the Association on all matters which affect or may affect terms and conditions of employment of employees covered by this agreement.

Section 66(g) of the regulations defines consultation to mean

(A) an open exchange of information for the purpose of examining a problem, clarifying a situation, or improving the relationship between parties,

(B) discussion, study and research of problems of concern to either party, and solutions for recommendation to the appropriate decision-making authorities;

I was given the impression by both sides that consultation, while commendable in theory, has not been used effectively in recent years. Moreover, both sides believe greater utilization of consultation is warranted. However, in order to be meaningful there must be ministerial input and meetings must be held regularly. In my respectful opinion since both sides share common views on the value of consultation as well as having indicated that it would be desirable to make more effective use of it, they ought to take the initiative and put their views into practise. It is the willingness of both sides to make it work that is needed to accomplish that fact. It seems to me that a possible place to start would be for the secretary of treasury board and the general manager of the Association to meet and explore ways and means of reviving the consultation process.

Other Issues

Association officials with whom I met advanced claims over several issues that they have been pursuing with the employer but without success. They presented them to me in the expectation that I would include them in my report and recommend that they be implemented. Most of these issues

rapidly. It seems to me that an excellent opportunity exists to carry out certain changes in a climate of congeniality that pervades. Both sides appear to me to be fairly flexible to making certain changes to the present framework (structure) although I would be less than candid if I were not to say that I detected pockets of resistance to change in some people with whom I spoke. I am convinced that this review has created certain expectations that changes will occur. If they fail to materialize I am equally convinced that the process, as presently exists, will be severely strained within the next couple to three years. I can do no better than to recommend, as strongly as I can, that changes occur now, at a time when the relationship is healthy and when flexibility abounds.

This review has attempted to limit discussion to the major issues which, in my opinion, require change. But the 1976 study also contains a number of proposed changes, some of which continue to warrant attention while others have had their importance wane with the passage of time. I decided very early in the preparation of this report that I would refrain from delving into the 1976 study in minute detail. However, I remained concerned over how to convey the entire story without doing so. Eventually I decided that the best medium I could employ in communicating my concerns was to draft a statute, which appears as Schedule B. I should

caution the reader that I make no pretence in being a statute draftsman. However, I believe that the general thrust of the contents in the statute reflect my views as contained in this report as well as in the 1976 study.

Summary of Recommendations

I recommend that the consultation and negotiation structure presently contained in regulations be removed and placed in a statute.

I recommend that probationary periods for newly hired employees be no longer than six months from date of hiring.

I recommend that a public service human relations act be enacted which will contain provisions for collective bargaining, grievance adjudication and related provisions that are normally associated with human relations in the public service.

I recommend that compulsory binding arbitration continue to be the dispute resolution mechanism employed in resolving disputes that become deadlocked in the civil service.

I recommend that arbitration tribunals be authorized to resolve any issue that fails to get resolved at the negotiation table.

I remain of the view therefore and recommend that the employer should have one individual from Treasury Board present at each set of negotiations. Of course that individual must be experienced in labour negotiations as well as being comfortable with financial figures.

It is not recommended that the individual from Treasury Board chair the negotiation teams.

January 1984

SCHEDULE A

Persons Interviewed

Paul Atkinson, Employee Relations officer, P.S.A.

Ken Brammer, Deputy Minister of Labour

Rick Callaghan, Director of Management Services, Department of Health and Social Services

George Contello, Staff member of Civil Service Commission and chairman of the negotiation team for the employer at civil service negotiations.

A. Currie, Deputy Minister of Justice

Carol Davis, Secretary, P.S.A.

D. Dennis, Deputy Minister of Highways

Hon. Albert Fogarty, Minister responsible for the Civil Service

Judy Goodwin, Research Director, P.S.A.

J. Kaptein, Provincial Auditor

Barry MacMillan, Secretary Treasury Board

Harry MacDonald, 1st Vice President, P.S.A.

Phil MacDougall, Deputy Minister of Finance

Sandy MacKay, President, P.S.A.

Hon. Lloyd G. MacPhail, Chairman of Treasury Board

Dan McCormac, Chairman of the Civil Service Commission

Hon. George McMahon, Minister of Justice

Foch McNally, Treasurer, P.S.A.

Armand Melanson, 2nd Vice President, P.S.A.

Lorne Moase, Deputy Minister

Brian Moriarty, General Manager, P.S.A.

Hon. Roddie Pratt, Minister of Labour

Ron Rice, Deputy Minister of Education

Keith Wornell, Deputy Minister of Health and Social Services

THE PUBLIC SERVICE HUMAN RELATIONS ACT
SCHEDULE B

Part I

1. In this Act

(a) "adjudication" means a procedure to determine a rights dispute;

(b) "arbitration" means a procedure to determine an interest dispute;

(c) "Association" means the Prince Edward Island Public Service Association, Inc.;

(d) "Authorized representative" means the employee organization that represents employees;

(e) "bargaining unit" means a unit of employees established for negotiation purposes;

(f) "Board" means the Public Service Human Relations Board;

(g) "board" means a board of arbitration;

(h) "Chairman" means the Chairman of the Public Service Human Relations Board;

(i) "collective agreement" means an agreement in writing between the employer and the authorized representative;

(j) "consultation and negotiation" means

(a) in the case of consultation

(i) an open exchange of information for the purpose of examining a problem, clarifying a situation, or improving the relationship between parties, and

(ii) discussion, study, and research of problems of concern to either party, and solutions for recommendations to the appropriate decision-making authorities.

(b) in the case of negotiation

(i) discussing in good faith,

(ii) bargaining collectively,

(iii) conciliation as prescribed in Part IV,

(iv) arbitration as prescribed in Part IV;

(k) "days" mean calendar days;

(l) "employee" means, subject to section 32(2), all permanent employees and all relief employees with a minimum of six months continuous employment but does not include

(i) employees of the Executive Division;

(ii) employees of the Executive council office, the Cabinet office, the Treasury Board, the Civil Service Commission and the Board;

(iii) Department of Labour employees involved in carrying out provisions of this Act;

(iv) Solicitors employed in the Department of Justice;

(v) employees participating in negotiations on behalf of the employer;

(vi) the chief health officer, medical specialist I, medical specialist II, director of mental health and the director of management services employed in the Department of Health and Social Services;

(vii) contract employees; and

(viii) students.

Part II

Board

2. (1) There is hereby established a Board to be known as the Public Service Human Relations Board.

(2) The Board is to be composed of a Chairman and one member representing employees and one member representing the employer.

(3) The Lieutenant Governor in Council shall, following consultation with the authorized representative, appoint the members to the Board, designating one of them to be Chairman.

(4) A majority of the members of the Board constitutes a quorum.

(5) A decision of the majority of the members of the Board present and constituting a quorum is the decision of the Board.

(6) The Board and each member thereof has the powers, privileges and immunities of a Commissioner under the Public Inquiries Act, including, but not so as to limit those powers, the power to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce any documents and things which the Board deems requisite to the full investigation of any matter within its jurisdiction.

(7) The Board may receive and accept any evidence and information on oath, affidavit, or otherwise as in its discretion it may deem fit and proper, whether admissible as evidence in a court of law or not.

(8) The Board shall determine its own procedure, but shall, in every case give an opportunity to all interested parties to present evidence and make representation.

(9) Each member of the Board shall, before acting as such, take and subscribe before the Clerk of the Executive Council an oath or affirmation of office in the following form:

"I do solemnly swear (affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform from the office of member of the Public Service Human Relations Board and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the said Board. So help me God."

3. The members of the Board shall be paid remuneration as may be fixed by the Executive Council, and actual and reasonable expenses as may be incurred by them in the discharge of their duties.

4. The Board

(a) may make rules governing its procedure under this Act, and

(b) with approval of the Executive Council, may make regulations necessary to enable it to discharge the duties imposed upon it by this Act.

5. (1) No member of the Board shall be appointed for a term of office of more than five years.

(2) Upon the expiration of any term of office of a member he may be re-appointed for a term of not more than five years.

6. (1) The Board may for the purposes of this Act make or issue such orders, notices, directives, declarations, or other decisions as it considers necessary with or without conditions.

(2) If any order, directive or decision is made by the Board pursuant to this Act and such order, directive or decision is not complied with, the Board may, on the request of the authorized representative, an employee or the employer, file a copy of the order, directive or decision with a Prothonotary and upon such filing, the order, directive or decision shall become a decision of the Supreme Court and be enforceable as such.

7. (1) An order, notice, directive, declaration, or other decision that the Board makes may be issued on its behalf by the Chairman or by any other person authorized by the Board to do so.

(2) An order, notice, directive, declaration, or other decision purporting to be signed by the Chairman or an authorized person shall be admitted in evidence as prima facie proof

(a) of the order, notice, directive, declaration, or other decision, and

(b) that the person signing it was authorized to do so,

without proof of the appointment, authorization or signature of the Chairman or the person authorized.

8. (1) The Board is empowered to decide for the purposes of this Act whether

(a) a person is an employee;

(b) the parties to a dispute have settled the terms and conditions to be included in a collective agreement;

(c) a collective agreement has been entered into;

(d) a person is bound by a collective agreement;

(e) a collective agreement is in effect;

(f) a person practices his profession as a condition of employment;

(g) there has been every reasonable effort to conclude a collective agreement;

(h) there has been a violation of Section 44 or 45,

and the Board's decision is final and binding.

(2) If a question arises as to whether a person is or is not to be included in a bargaining unit or any other unit for collective bargaining which cannot be settled by the persons concerned, the question shall be referred to the Board and its decision is final and binding.

Part III

Representation Rights

9. (1) The Association continues to be the authorized representative until its representation rights are revoked in accordance with this section.

(2) The Board may revoke the authorized representative of its representation rights when it

(a) no longer represents for consultation and negotiation purposes more than 50 percent of the employees in the bargaining unit, or

(b) provides funds directly to a federal, provincial, or municipal political party, or directly to a person or group of persons for political purposes, or is officially endorsing a political party or persons.

10. (1) Any organization of employees may apply to the Board to be designated the authorized representative when it establishes to the satisfaction of the Board that it represents for consultation and negotiation purposes more than 50 percent of the employees in the bargaining unit.

(2) An application under subsection (1) may be made only

(a) during the seventh and eighth months preceding the expiry date of the collective agreement, or

(b) at any time following the date of revocation pursuant to section 9(2)(b).

11. The employer shall be represented by such persons as may be designated by the Treasury Board.

Part IV

Consultation and Negotiation

12. Consultation processes may be established by the Treasury Board and the authorized representative.

13. Prior to the commencement of negotiations the parties shall meet to exchange data and attempt to resolve as many issues as possible through consultation.

14. (1) Three months preceding the expiry date of the agreement in force, either party may by notice in writing to the other party request it to commence negotiations with a view to the renewal or revision of an agreement or the adoption of a new agreement.

(2) The parties may commence negotiations at any time by mutual consent.

15. When one party has given notice under section 14(1) the parties shall, without delay, but in any case within fourteen days after the notice was given, meet and commence to negotiate with a view to the renewal or revision of an agreement or the adoption of a new agreement.

16. Where the negotiations have been entered into under section 15, a party to the negotiations shall not discontinue or withdraw from the negotiations on the ground that no notice, or improper or insufficient notice has been given under section 14.

17. The authorized representative may, subject to section 18, negotiate with the employer over terms and conditions of employment.

18. Every collective agreement may include all matters affecting wages or salaries, hours of work, and other terms, conditions and other benefits, except matters relating to

(a) the Merit System and its application in the appointment and promotion of employees;

(b) Superannuation;

(c) the application of the Classification of positions or job evaluation;

(d) the organization, establishment and administration of departments and branches of the employer,

and such matters shall not be the subject of negotiation nor be included in a collective agreement.

19. Where a notice to commence negotiations has been given under subsection 14(1) and

(a) negotiations have not commenced within the time prescribed by section 15, or

(b) negotiations have commenced and continued for six weeks and either party requests the Chairman, in writing, to appoint a conciliation officer to assist them in concluding an agreement or a renewal or revision thereof and such request is accompanied by a statement of the difficulties that have been encountered; and if in the opinion of the Chairman it is advisable to do so, the Chairman shall within seven days of receiving the request, appoint a conciliation officer.

20. The conciliation officer appointed under section 19 shall inquire into the matters of dispute and endeavour to bring about agreement between the parties.

21. After the conciliation officer has been appointed and the parties fail to adopt a new or revised agreement on the expiry date of the agreement in force, or at a later date mutually agreed by the parties, conciliation shall cease and the conciliation officer shall submit his report to the Chairman.

22. Where the parties have not adopted a new or revised agreement on the expiry date of the existing agreement, and

(a) either party, in writing, requests the appointment of a board of arbitration; or

(b) in the opinion of the Chairman, following consultation with the parties, a board of arbitration should be established;

the Chairman shall appoint a board of arbitration as hereinafter set out.

23. (1) A board of arbitration shall consist of three members.

(2) When under section 22 the Chairman is requested to establish, or decides to establish, a board of arbitration, he shall forthwith by notice in writing, require the parties each to nominate, within ten days after the mailing by registered mail or delivery of the notice by the Chairman, one person to be a member of the board of arbitration; and upon receipt of the nomination, the Chairman shall appoint each of these persons as a member of the board of arbitration; and in the event of the failure of either party to make such nomination within the time specified, the Chairman may appoint any person whom he thinks fit and proper and that person shall be deemed to be nominated by the party so in default.

(3) After appointing a person as a member of the board of arbitration, the Chairman shall forthwith notify that member of his appointment by registered letter addressed to him at his latest address known to the Chairman and the notification shall include the name and address of the other arbitrator.

(4) The Chairman by notice in writing shall require the persons appointed to nominate within ten days of the date of such notice a third person who is willing and able to act to be a member and chairman of the board of arbitration, and, in the default of such nomination, the Chairman shall appoint a person whom he thinks to be fit and proper to be the third member and chairman of the board of arbitration.

(5) When the Chairman has given notice to the parties that the board of arbitration has been appointed under this section, it shall be deemed that the board of arbitration described in the notice has been established in accordance with this section; and no order shall be made or process entered, or proceedings taken, in any court to question the appointment of the board of arbitration or to review, prohibit or restrain the establishment of the board of arbitration or any of its proceedings.

(6) If mutually agreed to by the parties, the Chairman may appoint one person to act as the arbitration board, under the same provisions provided for the selection of a chairman.

(7) A single arbitrator appointed under this section shall have the same powers, duties and responsibilities as a board of arbitration appointed under this Act.

(8) The Arbitration Act does not apply to arbitrators under this Act.

24. (1) Not later than ten days after the board is appointed, the board shall proceed to hear the matters referred to it and to determine the matters upon which the parties are unable to agree.

(2) The initial presentations to the board by each of the parties shall be made with both parties present and with each having the opportunity for rebuttal.

(3) The parties to the arbitration proceedings may be represented by legal counsel.

(4) A board of arbitration has jurisdiction only to consider and an arbitration award shall only include those matters that may be included in a collective agreement as permitted by Section 19.

26. (1) Except where otherwise provided in this Act, a board of arbitration may determine its own procedure, but shall give full opportunity to all parties to present evidence, and make representations.

(2) The chairman of the board of arbitration shall, not later than five days prior to the date fixed for the purpose, give notice of the time and place of the hearing to the parties to the negotiations.

(3) The chairman and one other member of the board shall constitute a quorum, except in the case of a board established pursuant to subsection 23(6) and in the case of the absence of any member from a meeting of the board, the other two members shall not proceed unless satisfied that the third member has been notified of the meeting in ample time to

admit his attendance. If a member is unable to attend because of illness, death or other reasons mutually agreed upon by the parties, an alternate member may be appointed by the party affected to act on behalf of the absent member.

(4) The decision of the majority of members present at the sitting of a three person board on questions of procedure, admissibility of evidence and other matters which arise during such sitting shall be the decision of the board, but lacking a majority decision on such matters the decision of the chairman shall govern.

(5) A board of arbitration shall have the power

(a) to summon and enforce the attendance of witnesses and to require them to give oral and written evidence on oath or on solemn affirmation, if they are persons entitled to affirm in civil matters, in the same manner as a court of record in civil cases;

(b) to administer oaths; and

(c) to accept, admit and call for such evidence it thinks fit, whether admissible in a court of law or not.

27. Recognizing the general aim of providing incomes for employees which are fair to both the Prince Edward Island taxpaying public and to the public service, the board of arbitration, in the conduct of proceedings before it and in rendering an arbitration award in respect of a matter in dispute, shall consider

(1) on a priority basis where in the opinion of the board of arbitration there is validity, a fair comparison between the relationship of incomes, terms and conditions and other benefits for employees to those available to persons doing similar work,

(a) in the Prince Edward Island private sector for better paying employers with modern employee relations and structures suitable for fair comparability purposes, and

(b) in other governments and companies suitable for fair comparison in other Atlantic

provinces, particularly when adequate comparisons are not available on Prince Edward Island, but having regard to the varying economic capabilities of the provinces;

(2) in addition as the board of arbitration in its opinion may consider relevant

(a) the requirements to obtain and retain competent employees,

(b) the desirability of maintaining appropriate relationships in the conditions of employment as between classifications in the public service, and

(c) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed, and the nature of the services rendered;

(3) where current remuneration of those doing comparable work outside the public service can be shown to be based on pay rates in the public service, these comparisons may not be considered in isolation from other comparisons in making awards;

(4) such other factors as the board may deem applicable without significantly diminishing the requirements of subsection (1).

28. (1) After making full inquiry and without undue delay, the board shall make an award, setting out its decision in writing as to the manner in which all matters in dispute between the parties shall be settled and the chairman of the board shall forthwith forward certified copies of the decision in writing to the parties to the negotiations and to the Chairman.

(2) The board's award shall be signed by the members concurring therein.

(3) A decision of or award of a majority of the members shall be the decision or award of the board.

(4) An award of a board of arbitration is binding upon the parties.

(5) Except where the parties concerned mutually agree to an extension, the board shall make its award not later than ten days after completing an inquiry.

29. (1) The members of the board of arbitration shall be paid such remuneration as the Chairman determines, and their fees and expenses shall be cost shared on a 50-50 basis by the Government of Prince Edward Island and the authorized representative.

(2) With the approval of the Chairman, a board of arbitration may secure such secretarial and clerical assistance as it deems necessary for the efficient carrying out of its duties.

30. Not later than thirty days from the date that a board of arbitration makes its decision, the parties shall prepare and sign a collective agreement embodying all matters settled in the award and all matters previously agreed upon in negotiations.

31. (1) A collective agreement made pursuant to this Act remains in force until a new collective agreement is adopted to replace it.

(2) Every collective agreement made pursuant to this Act shall remain in force for at least one year and not more than three years.

(3) Neither party to a collective agreement shall change any term or condition therein unless the other party consents to the change or until a new collective agreement has been concluded.

Part V

Grievance Procedure and Adjudication

32. In this part

(a) "adjudication" means a procedure to determine a rights dispute;

(b) "adjudicator" means a person who has been appointed to resolve a rights dispute;

(c) "board" means an adjudication board

(d) "employee" means all employees who have been continuously employed for at least six months but does not include employees of the Executive Division as set out in Section 8(1) of the Civil Service Act;

(e) "grievance" means a complaint in writing setting forth the reasons for the complaint in respect of a dismissal, suspension, demotion, working conditions, terms of employment or a financial penalty.

33. (1) The Chairman shall administer the system of grievance adjudication established under this Act and may designate the chief adjudicator appointed under this section to administer the system of grievance adjudication on his behalf.

(2) The Chairman, in consultation with other members of the Board, shall appoint three persons and three alternate persons to be adjudicators. Of these persons

(a) one shall be appointed chief adjudicator; and

(b) of the remaining persons, two shall be appointed after seeking agreement with the authorized representative.

(3) A person shall be appointed an adjudicator for such period, not exceeding three years, as may be determined by the Board, but may be removed at any time by the Chairman upon the recommendation of the Board.

(4) An adjudicator may be reappointed for a further

three year term;

(5) an adjudicator appointed under this section shall be paid such remuneration as is fixed by the Executive Council.

34. (1) No grievance shall be referred to adjudication and no adjudication board shall hear or render a decision on a grievance until all procedures established for the presenting of the grievance up to and including the final level in the grievance procedure have been complied with.

(2) No adjudication board shall, in respect of any grievance render any decision thereof the effect of which would be to require the amendment of a collective agreement or an amendment of any Act.

35. Where an employee is not satisfied with the decision at the level immediately below that of adjudication, the employee may, within fourteen days of being notified of the decision or action, file the grievance with the Chairman provided that

(a) it is a dispute between the employee and the employer with respect to the application, interpretation, or alleged violation of this Act or the collective agreement; or

(b) it is the appeal of a disciplinary penalty resulting in a dismissal; demotion, suspension, written reprimand; or

(c) it is a financial penalty.

36. Subject to sections 34 and 35, the Chairman or his designate shall refer the grievance to a board of adjudication.

37. A board of adjudication shall be composed of three members appointed under section 33, namely,

(a) one member, who shall be chairman;

(b) one member, who was appointed pursuant to section 33(2)(b); and

(c) one other member.

38. The chairman of an adjudication board has the powers of a commissioner under the Public Inquiries Act, R.S.P.E.I., 1974, Cap, P-30.

39. (1) The chairman of an adjudication board shall convene the board within twenty-one days after receiving the grievance.

(2) The board shall determine its own procedures, but shall give full opportunity to all parties to present evidence and make presentations. The board shall, as much as possible, avoid legalistic or formal procedures,

(3) The board shall confine itself to the present issue submitted, and does not have authority to determine issues not submitted to it.

40. (1) The chairman of the adjudication board shall deliver a written decision of the board within thirty days of the conclusion of the hearing, to

(a) the employee;

(b) the department or agency;

(c) the authorized representative when the employee is represented by an authorized representative; and

(d) the Chairman of the Board.

(2) Where disciplinary action against an employee is involved, the adjudication board may confirm, increase, reduce, or rescind the penalty.

(3) The decision of the adjudication board shall be binding on all parties.

41. Where a grievance that may be presented by an employee to adjudication is a grievance relating to the interpretation or application in respect of him of a provision of a collective agreement or an arbitration award, the employee is not entitled to refer the grievance to adjudication unless the authorized representative for the bargaining unit to which the collective agreement or arbitration award applies signifies in prescribed manner

(a) its approval of the reference of the grievance to adjudication; and

(b) its willingness to represent the employee in the adjudication proceedings.

Part VI

Prohibitions

42. (1) The employer shall not cause a lockout and the employee shall not strike.

(2) Nothing in this Act shall be interpreted to prohibit the suspension or discontinuance of operations in an employer's establishment, in whole or in part, not constituting a lockout or strike.

43. The authorized representative shall not sanction, encourage, or support, financially or otherwise, a strike by its members or any of them who are governed by the provisions of this Act.

44. (1) The employer or a person acting on behalf of the employer shall not

(a) refuse to employ or terminate the employment of any person or discriminate against any person in regard to employment or any term or condition of employment because the person

(i) is a member or an applicant for membership in any employee organization; or

(ii) has testified or otherwise participated or may testify or otherwise participate in a proceeding under this Act; or

(iii) has made or is about to make a disclosure that he may be required to make in a proceeding under this Act; or

(iv) has made an application or filed a complaint under this Act.

(b) impose any condition in a contract of employment that restrains, or has the effect of restraining, an employee from exercising any right conferred upon him by this Act.

(c) seek by intimidation, threat of dismissal or any other kind of threat, by the imposition of a pecuniary or other penalty or by any

other means, to compel a person to refrain from becoming or to cease to be a member, officer or representative of any employee organization.

45. The authorized representative or a person acting on behalf of the authorized representative shall not

(a) except with the consent of the employer of an employee, attempt, at an employee's place of employment during the working hours of the employee, to persuade the employee to become, to refrain from becoming or to cease to be a member of the authorized representative.

(b) use coercion or intimidation of any kind with respect to any employee with a view to encouraging or discouraging membership or activity in the employee organization.

(c) discriminate against a person in regard to employment or membership in the employee organization, or intimidate or coerce a person or impose a pecuniary or other penalty on a person, because he

(i) has testified or otherwise participated or may testify or otherwise participate in a proceeding authorized or permitted under a collective agreement or a proceeding under this Act, or

(ii) has made or is about to make a disclosure that he may be required to make in a proceeding authorized or permitted under a collective agreement or a proceeding under this Act, or

(iii) has made an application or filed a complaint under this Act.

Part VII

Penalties

46. (1) An employee who contravenes this Act or fails to do anything required of an employee by this Act is guilty of an offence and liable upon summary conviction to a fine of not more than one hundred dollars for each day during which the contravention of failure occurs or continues.

(2) Every person acting on behalf of the employer who declares or causes a lockout contrary to this Act is liable upon summary conviction to a penalty not exceeding three hundred dollars for each day that the lockout exists.

(3) If the authorized representative declares or authorizes a strike contrary to this Act, it is liable upon summary conviction to a penalty not exceeding three hundred dollars for each day that the strike exists.

(4) Every officer or representative of the authorized representative who declares or authorizes a strike contrary to this Act is liable upon summary conviction to a penalty not exceeding three hundred dollars for each day that the strike exists.

Part VIII

General

47. Any collective agreement in force between the employer and the authorized representative at the time this Act comes into force shall continue in accordance therewith until its termination except that the provisions of this Act respecting those matters that are subject to arbitration and adjudication and the procedures respecting the same shall apply to such collective agreements.

48. (1) An arbitration board, adjudicator or an adjudication board may of its own motion or upon application of the employer or the authorized representative state a case in writing for the opinion of the Appeal Division of the Supreme Court upon any question which is a question of law.

(2) A like reference to that contained in subsection (1) may also be made by the Board.

(3) The Appeal Division of the Supreme Court shall hear and determine questions of law arising as a result of a stated case taken pursuant to subsection (1) or (2) and remit the matter to the arbitration board, the adjudication board or the Board, whichever is appropriate under the circumstances with the opinion of the Court thereon.

49. This Act is binding upon the Crown.

50. Parts X, XI, and XV of the Civil Service Act regulations (EC709/83) are revoked.

51. This Act comes into force on such date as may be fixed by Proclamation of the Lieutenant Governor in Council.